

# UPDATE

Spring 1997

## Do You Have Questions Concerning NEPA Compliance?

PBS has launched the NEPA Call-In information and research service to answer your technical questions about the National Environmental Policy Act (NEPA) and other related environmental issues. Staffed by environmental professionals with access to a network of experts throughout the nation, NEPA CALL-IN is available to research your Technical Inquiries (TIs) concerning:

- ☒ All phases of NEPA;
- ☒ Environmental compliance;
- ☒ Cultural and historical resource management;
- ☒ Floodplain management;
- ☒ Public involvement;
- ☒ Phase I/ Phase II Site Assessments;
- ☒ The Clean Air Act;
- ☒ The Clean Water Act;
- ☒ Environmental justice; and
- ☒ Related environmental regulations and policy.

NEPA CALL-IN is modeled after the highly successful "PRO-ACT" environmental information clearinghouse operated for the Air Force Center for Environmental Excellence (AFCEE). NEPA CALL-IN may be used by GSA personnel in the Central and Regional offices as well as authorized GSA contractors. Users receive up to 40 hours of individual research for each TI. Requests for assistance requiring more than 40 hours of research can be coordinated with GSA's Central Office for approval on a case by case basis. Each TI is researched and fully developed to meet customer expectations. Responses are supported by citations from regulations, guidance documents, Executive Orders, and expert points of contact.

NEPA CALL-IN staff will respond by phone or e-mail within five working days and follow-up with a final, written response, within 14 working days. There is no limit to the number of questions a user may ask and all services are funded by the Central Office.

NEPA CALL-IN has also developed an electronic Environmental Resource Library (ERL) on GSA's World Wide Web server accessible through the Internet. The ERL includes Executive Orders, Federal environmental laws and their corresponding Federal Regulations, GSA Administrative Orders and Directives, and environmental policy and guidance manuals pertaining to NEPA. The ERL also contains electronic versions of:

- ☒ NEPA CALL-IN fact sheets;
- ☒ Newsletters;
- ☒ Technical Inquiries;
- ☒ Sample Scopes of Work;
- ☒ Sample Memorandums of Agreement;
- ☒ Sample Letters to the State Historic Preservation Officer on various topics; and
- ☒ Sample NEPA documents and recommended formats.

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The NEPA CALL-IN ERL can be accessed through the GSA World Wide Web Home Page or can be found at:

<http://www.gsa.gov/pbs/pt/call-in/nepa.htm>

If you need:

- ➔ A document;
- ➔ State or Federal requirements;
- ➔ Assistance with GSA policy; or
- ➔ To crossfeed information and success stories to other regions;

Contact us at (202) 208-6228 or via GSA cc:Mail at callin,nepa (our Internet e-mail address is [nepa.callin@gsa.gov](mailto:nepa.callin@gsa.gov)).

## Changes to Wetlands Permitting

An expedited permit procedure allowing developers to drain thousands of acres of wetlands is being phased out. The permit, known as Nationwide Permit 26, has allowed development in wetlands to proceed with little oversight when the project encompassed less than 10 acres. Environmentalists have argued Nationwide Permit 26 allows the destruction of wetlands by providing a blanket approval for qualifying projects impacting wetlands. Wetlands provide critical nursery and habitat areas for numerous wildlife species and act as a buffer to absorb floodwaters.

**NEPA Call-In**

*"Designed to meet the NEPA compliance needs of GSA's realty professionals"*



The Army Corps of Engineers (COE), the government agency administering the program, plans to phase out the permit over the next two years. In the meantime, the permit can only be used for projects involving no more than three acres of wetland. The COE is planning to establish a group of expedited permits to be used in place of Nationwide Permit 26. These permits will be narrower in scope and will specify a certain type of activity and the conditions for approval for that activity without additional review. This will enable the COE to phase out Nationwide Permit 26 while limiting the increase in paperwork associated with this action. Expedited permits allow developers to by-pass lengthy application and review processes. The COE is not abolishing the permit as this would severely limit development and solicit complaints from the construction industry. According to the COE, the new permitting system will allow projects with "truly minimal impacts" to take place.

More information on wetlands is available in the NEPA Call-In factsheet "Wetlands Protection." To obtain a copy of the factsheet, contact NEPA Call-In at 202-208-6228 or download it from the NEPA Call-In web page at <http://www.gsa.gov/pbs/pt/call-in/nepa.htm>.

## **Integrating NHPA Compliance With NEPA Documents**

Environmental compliance regulations often overlap in areas of analysis and submission requirements. The National Environmental Policy Act (NEPA), which requires Federal agencies to consider the impact of their activities on the environment (including historic properties) and the National Historic Preservation Act (NHPA), which requires Federal agencies to consider historic properties in their planning process, provide an excellent example of regulatory overlap. NEPA Call-In attended a training course on Section 106 and obtained the following information from ACHP staff on integrating NEPA and NHPA compliance.

### **How Does NHPA Relate To NEPA?**

NEPA and NHPA address many of the same concerns. Identifying potential impacts and resources that should be protected, considering alternatives to limit or mitigate adverse effects, and identifying irreversible effects are among these. However, these laws have different purposes. NEPA is a full disclo-

sure law meaning that the entire thought process of the decision is available to the public. NHPA is a consultation type of law and does not result in a final public document. The thresholds for these laws also differ. NEPA requires that agencies consider significant impacts on the environment. NHPA requires the consideration of any effect a Federal undertaking may have on historic properties, regardless of significance. The term undertaking is defined in NHPA as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

- (A) those carried out by or on behalf of the agency;
- (B) those carried out with Federal financial assistance;
- (C) those requiring a Federal permit, license, or approval; and
- (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency. (16 USC 470w(7)).

Although these laws are similar, compliance with one statute does not constitute compliance with the other.

### **How Can Section 106 And NEPA Compliance Be Coordinated To Reduce Duplication Of Effort?**

When an agency is defining the area of potential effects (APE) under Section 106, it should define the APE to include each of the alternative sites being considered under NEPA. The agency should begin assessing information needs *early*, that is, when it begins planning the Environmental Assessment (EA) or during scoping for the Environmental Impact Statement (EIS). NEPA and NHPA should be coordinated at the following milestones:

- ① Identification of alternatives under NEPA can incorporate Step 1 of the Section 106 process which identifies historic properties within the APE. Include information learned in Step 1 in the discussion of alternatives in the EA or EIS.
- ① Identification and evaluation of potential effects under NEPA can incorporate Step 2 of Section 106, where historic properties are evaluated and the effects of the undertaking are determined. Information gained under Step 2 should be included in the discussion of environmental consequences in the EA or EIS. In addition, the EA or draft EIS can be used as documentary support for Section 106 determination of no effect, no adverse effect, or adverse effect.

- ① If an adverse effect on historic properties is found, the agency enters consultation with the State Historic Preservation Officer or the ACHP (Step 3). At this point, documentation is required to provide all parties with enough information to allow for informed consultation. The documentation requirements are outlined in the regulations at 36 CFR § 800.8(b):

- (1) A description of the undertaking, including photographs, maps, and drawings, as necessary;
  - (2) A description of the efforts to identify historic properties;
  - (3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and
  - (4) A description of the undertaking's effects on historic properties.
- ① The draft EIS or environmental impact report prepared under NEPA can be used to meet some of these documentation requirements for consultation. However, if an agency chooses to use a NEPA document as Section 106 documentation, a cover letter must be attached explaining that the document is intended to meet the notification requirements of Section 106, in addition to the requirements of NEPA, and indicating where in the EIS the pertinent information can be found. Once consultation is complete and a Memorandum of Agreement (MOA) is developed, the terms of the MOA or the MOA itself can be included in the final NEPA report.
- ① In determining if an action can qualify as a categorical exclusion under NEPA, the agency must consider "the degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places..." (40 CFR 1508.27(8)). To make this determination, an agency must complete the initial steps of the Section 106 process. It is important to note that an action can be a categorical exclusion under NEPA but still require Section 106 review.

Agencies also need to remember that compliance with one statute does not constitute compliance with the other. Section 110(i) of NHPA states nothing in NHPA requires agencies to prepare an EIS or exempts agencies from preparation of EIS. Historic preservation activities should be planned to satisfy all pertinent statutory requirements.

## FYI

### Summaries of Major Environmental Laws

#### The Clean Air Act

The Clean Air Act (CAA) recognizes that increases in air pollution results in danger to public health and welfare. To protect and enhance the quality of the Nation's air resources, the CAA authorizes the Environmental Protection Agency (EPA) to promulgate six National Ambient Air Quality Standards (NAAQS) which regulates carbon monoxide, lead, nitrogen dioxide, ozone, sulfur dioxide, and particulate matter. The CAA seeks to reduce or eliminate the creation of pollutant at their source, and designates this responsibility to state and local governments. States are directed to develop implementation plans to achieve NAAQS. Geographic areas are officially designated by the EPA as being in attainment or nonattainment for pollutants in relation to their compliance with NAAQS. Geographic regions established for air quality planning purposes are designated as Air Quality Control Regions (AQCR). Pollutant concentration levels are measured at designated monitoring stations within the AQCR. An area is designated as unclassifiable when insufficient monitoring data exists.

#### The Clean Water Act

The Clean Water Act (CWA), a 1977 amendment to the Federal Water Pollution Control Act of 1972, is administered by the EPA and sets the basic structure for regulating discharges of pollutants into U.S. waters. The CWA requires the EPA to establish water quality standards for specified contaminants in surface waters, and forbids the discharge of pollutants from a point source into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. Section 404 of the CWA establishes a Federal program to regulate the discharge of dredged and fill material into U.S. waters. The objective of the Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.

*Continued on Page 4*

## **The Coastal Zone Management Act of 1972**

The Coastal Zone Management Act (CZMA) of 1972 is concerned with the effective management, beneficial use, protection, and development of the coastal zone. It declares a National policy to preserve, protect and develop, and where possible to restore or enhance the resources of the Nation's coastal zone. The CZMA encourages states to exercise their full authority over the coastal zone, through the development of land and water use programs in cooperation with Federal and local governments. States may apply for grants to help develop and implement management programs to achieve wise use of the land and water resources of the coastal zone. Development projects affecting land or water use or natural resources of a coastal zone, must ensure the project is, to the maximum extent practicable, consistent with the state's coastal zone management program.

## **Executive Order (EO) 11990, "Protection of Wetlands"**

EO 11990 directs agencies to consider alternatives to avoid adverse effects and incompatible development in floodplains. Federal agencies are to avoid new construction in wetlands unless the agency finds there is no practicable alternative to construction in the wetland, and the proposed construction incorporates all possible measures to limit harm to the wetland. Agencies should use economic and environmental data, agency mission statements, and any other pertinent information when deciding whether or not to build in wetlands. EO 11990 directs each agency to provide for early public review of plans for construction in wetlands.

Summaries of additional laws and regulations are being prepared and will be available soon in a NEPA Call-In factsheet.

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## **Interesting Technical Inquiries (TIs)**

**TI 0007A - Blanket Floodplain Waiver:** We received a request for information on whether a "blanket floodplain waiver" could be obtained from the Federal Emergency Management Agency (FEMA) when GSA plans activities in an area which is nearly all floodplain. Additionally, it was asked how to obtain such a waiver if it does exist.

NEPA Call-In contacted Mr. Phil Youngberg, GSA Region 4 Environmental Officer (404) 331-1831, to obtain information on GSA blanket floodplain waivers. Mr. Youngberg provided NEPA Call-In a copy of a floodplain waiver "Document of Determination" previously utilized by GSA Region 4. The "Document of Determination" was prepared in accordance with the 1985 GSA memo, "Floodplain Waivers: Proper Documentation and Processing Procedures and GSA Policy on Blanket Waivers." Mr. Youngberg stated the memo was originally approved by FEMA but expired in 1992 and was not renewed. Therefore, blanket floodplain waivers are no longer used by GSA.

Mr. Youngberg stated Region 4 is reviewing projects on an individual basis to determine if they meet the criteria in Executive Order 11988, "Floodplain Management." The criteria are listed in Section 2(a)(2) and Section 3 of the Executive Order. GSA ADM 1095.2, "Consideration of floodplains and wetlands in decisionmaking", contains GSA procedures for actions which impact a floodplain. Of particular relevance is Chapter 2, "Implementing the Flood Plains and Wetlands Orders."

NEPA Call-In reviewed Executive Order 11988, "Floodplain Management" which directs agencies to consider alternatives to avoid adverse effects and incompatible development in floodplains. We also reviewed "Further Advice on Executive Order 11988 Floodplain Management," the interagency document issued by FEMA. This document contains procedures for obtaining a "general (area) review" and a "class review," which bear some similarities to "blanket floodplain waivers."

NEPA Call-In also contacted a program specialist in FEMA's Mitigation Directorate regarding FEMA procedures on floodplain waivers. NEPA Call-In was told FEMA's responsibility regarding actions being taken by other Federal agencies under Executive Order 11988, "Floodplain Management," is one of consultation. Their role is largely guidance and assistance to Federal agencies in implementing the activities under EO 11988. FEMA has no oversight or regulatory authority over other Federal agencies. It is GSA's responsibility to implement the provisions of EO 11988.

Regarding the availability of "blanket floodplain waivers," the FEMA representative stated they cannot be used by GSA since they are in violation of EO 11988. There is no basis in EO 11988 for granting a blanket floodplain waiver for any action associated with the potential to result in: (a) long or short term adverse impacts associated with the occupancy or modifica-

tion of floodplains, or (b) direct or indirect support of floodplain development. EO 11988 applies to any Federal action including acquiring, managing, and disposing of Federal lands and facilities; providing Federally undertaken financed, or assisted construction and improvements; and conducting Federal activities affecting land use, such as planning, regulating, or licensing activities. Application of the Order also applies to Federal actions in areas which may be entirely in a floodplain, such as a community, county, region, or territory entirely located in the floodplain. There are no special exemptions under the EO for this situation.

The FEMA representative also provided additional information on when a "general (area) review" and a "class review," as described in "Further Advice on EO 11988, Floodplain Management," could be used by GSA. The representative stated the concepts "general or area review" and "class review" do not provide for blanket waivers from EO 11988 or from any other applicable Federal, State or local code or regulation pertaining to floodplains. A general or area-wide review may be substituted for individual compliance with EO 11988 when a series of individual actions is proposed or contemplated over an indefinite time period, such as the construction of a multi-building campus. The general or area wide compliance process shall comply with the full decision-making process for avoiding floodplain locations.

According to the FEMA representative, a class review may be done for certain routine or repetitive actions. A class review is limited to actions for which there is no practicable alternative to siting in a floodplain. Examples of qualifying activities are private and public water-use facilities, fences, public access structures (e.g., picnic tables, benches, grills etc.), and small buildings with less than 25 square feet of floor space used for storage of water-use related equipment. Compliance with EO 11988 must be maintained to ensure the activities for which a class review is being undertaken would not have an adverse impact on floodplain values or place property and persons at risk. NEPA Call-In emphasizes actions involving either a "general (area) review" or a "class review" must be coordinated with the local government.

In summary, blanket floodplain waivers for GSA activities in an area which is nearly all floodplain can no longer be used by GSA since they are in violation of EO 11988. Procedures for floodplain "general (area) reviews" and "class reviews" are only applicable in very limited situations as outlined above. Typically, an evaluation of an action which will impact a floodplain must be completed following the

requirements outlined in GSA ADM 1095.2 and EO 11988.

NEPA Call-In provided the documents mentioned above to the client and recommended all actions be coordinated with the local governmental body concerned with floodplain management.

**TI 0005 - NEPA Evaluation of Alternatives:** NEPA Call-In recently provided information on the evaluation of alternatives under the National Environmental Policy Act (NEPA). The client wanted to know the level of detail necessary to evaluate alternatives discussed in an Environmental Assessment (EA). NEPA Call-In reviewed Title 40 CFR Parts 1500-1508 which contains the regulations for implementing NEPA. The following is a summary of the regulatory requirements:

According to 40 CFR Part 1502.14, agencies must address the following in the alternatives section of the EA:

"Thoroughly evaluate all of the reasonable alternatives and if any alternatives were not evaluated thoroughly, explain why they were eliminated. Include enough information on each alternative to allow reviewers to evaluate and compare them."

NEPA Call-In also reviewed the GSA publication "PBS Preparation of Environmental Assessments and Impact Statements". This document states the "extent of discussion on each alternative depends on the nature of the alternative discussed. However, give particular attention to whether it would avoid the adverse impacts expected from the proposed action."

NEPA Call-In sent copies of the documents mentioned above to the client. NEPA Call-In advised that each of the alternatives be evaluated on a fair basis. It should be demonstrated that the preferred alternative was chosen after careful consideration and the alternative selected can be defended under the criteria listed in NEPA.

**TI 0026 - Floodplain Guidance:** A customer recently requested guide books on floodplains. NEPA CALL-IN contacted the U.S. Army Corps of Engineers, who provided the following documents:

- ☐ "Flood Proofing Systems and Techniques," USACE, December 1984;
- ☐ "Flood Proofing Techniques, Programs, and References," USACE, February 1991;
- ☐ "Local Flood Proofing Programs," USACE, June 1994;

- ☐ "Flood Proofing Tests," USACE, August 1988;
- ☐ "Flood Proofing Technology," USACE, April 1994;
- ☐ "Flood Proofing Bibliography," USACE, June 1988;
- ☐ "Protecting Floodplain Resources," Federal Interagency Floodplain Management Task Force, undated;
- ☐ "A Unified National Program for Floodplain Management," Federal Interagency Management Task Force, 1994; and
- ☐ "Flood-Prone Property: A Guide for the Builder and the Developer," Tennessee Valley Authority, undated.

In addition, the Federal Emergency Management Agency provided the following documents:

- ☐ "How to Use a Flood Map to Determine Flood Risk for a Property," FEMA 258, May 1995;
- ☐ "A Guide for Community Officials, Appeals, Revisions, and Amendments to National Flood Insurance Program Maps," FEMA, Federal Insurance Program (FIA) 12, December 1993;
- ☐ "Answers to Questions About Substantially Damaged Buildings," FEMA 213, May 1991;
- ☐ "Mandatory Purchase of Flood Insurance Guidelines," FEMA 186, October 1989;
- ☐ "Reducing Losses in High Risk Flood Hazard Areas: A Guidebook for Local Officials," FEMA 116, February 1987;
- ☐ "Floodproofing Non-Residential Structures," FEMA 102, May 1986;
- ☐ "Coastal Construction Manual," FEMA 55, February 1986;
- ☐ "Design Guidelines for Flood Damage Reduction," FEMA 15, December 1981;
- ☐ "Users Guide to Technical Bulletins," FEMA, FIA Technical Bulletin (TB)- 0, April 1993;
- ☐ "Openings in Foundation Walls for Buildings Located in Special Flood Hazard Areas," FEMA, FIA-TB-1, April 1993;
- ☐ "Flood-Resistant Materials Requirements for Buildings Located in Special Flood Hazard Areas," FEMA, FIA-TB-2, April 1993;
- ☐ "Non-Residential Floodproofing—Requirements and Certification for Buildings Located in Special Flood Hazard Areas," FEMA, FIA-TB-3, April 1993;
- ☐ "Elevator Installation for Buildings in Special Flood Hazard Areas," FEMA, FIA-TB-4;
- ☐ "Free-of-Obstruction Requirements for Buildings Located in Coastal High Hazard Areas," FEMA, FIA-TB-5, April 1993;
- ☐ "Below-Grade Parking Permits for Buildings Located in Special Flood Hazard Areas," FEMA, FIA-TB-6, April 1993; and

- ☐ "Wet Floodproofing Requirements for Structures Located in Special Flood Hazard Areas," FEMA, FIA-TB-7.

The documents were forwarded to the customer and included in the NEPA Call-In Library. To obtain copies of these documents, contact NEPA Call-In at 202-208-6228.

## Success Stories: GSA Region IV

### Judge Praises Region IV Efforts, NEPA Process

In March 1994, GSA Region IV received a Site Directive initiating selection and acquisition of a site for Savannah's proposed Federal Courthouse Annex. This construction would add 165,000 square feet of space for the U.S. District Court in Savannah, Georgia. The Courts did not want to abandon their National Register listed courthouse which they had occupied since the early 1800's and is located within the Savannah National Historic Landmark District.

The District Court's staff had doubled over the past 10 years and space was required for staff and additional judgeships. Additional space was also required for the U.S. Circuit Court and U.S. Marshals Service. An Annex was proposed to meet the Court's expansion needs.

GSA was faced with a number of challenges, including:

- ➔ The local community's distrust of GSA which had previously built incompatible buildings within the District;
- ➔ The local community's pre-conceived notion of the "best" site;
- ➔ The Court and GSA's pre-conceived notion of the "best" site;
- ➔ Need to maintain consistency with General Oglethorpe's 1733 City Plan, which is the basis for the creation of the historic District; and
- ➔ Need to not demolish any historic buildings.

The NEPA process and the preparation of an Environmental Impact Statement (EIS) were instrumen-



tal in identifying, analyzing and mitigating potential impacts. Region IV held public scoping meetings and hearings, 13 formal meetings with government entities, historic preservation groups and other stakeholders. From the two years of negotiation and consultation fostered by the NEPA process, a new adjacent alternative site was identified that had not even been considered in the early planning. As the new alternative evolved, GSA gained support from both the local community and from the Courts.

The NEPA process was so successful, in fact, that in November 1996 Judge B. Avant Edenfield wrote:

*"For better than two years now, this Court has enjoyed a partnership with the architect Robert A.M. Stern and the General Services Administration. I must admit, in the beginning I was resistant to this process, for in my line of work I am used to rendering sole decisions. But over time I got used to making decisions by committee and consensus building and have been pleasantly surprised by the good results we enjoy today. Rarely in my past dealings with the General Services Administration have I experienced*

*such cooperation and openness to the needs of this court, and the willingness to listen to our ideas. This process has steered me away from my original preferred site on Broughton Street, to the current site of the two small Juliette Gordon Low Buildings which, I will concede, has greater potential over time than the Broughton Street site would have been....it is evident by the excellent work, that we have the right architect, the right site, and the right team."*

According to Region IV's Phil Youngberg, "the NEPA process works: it brings all the potentially affected parties to the table, it often identifies alternatives that may not have originally been considered, and it results in a better decision and better end product."

For more information on this project, contact Mr. Youngberg at 404-331-1831.

## **NEPA Call-In Wants to Hear From YOU!!!!**

There is only one way to ensure we are meeting your expectations: by asking you. Our goal is to be thorough and responsive to each and every customer. Please help us mold this service to meet your needs by telling us what you want. Additionally, each technical inquiry response includes an evaluation form to provide us with valuable feedback. We will make every attempt to incorporate your ideas and suggestions into this service. Look for our upcoming Fact Sheet on "Brownfields Redevelopment," an in-depth discussion of Federal initiatives to redevelop abandoned or inactive urban industrial sites potentially contaminated with pollutants. If you have comments or suggestions for future Fact Sheets, please let us know. **NEPA Call-In is here to help. Call us at 202-208-6228 or sent us an e-mail through GSA cc:Mail at callin, nepa.**

***NEPA Call-In is GSA's National Environmental Policy Act  
(NEPA) information clearinghouse and research service.  
NEPA Call-In is designed to meet the NEPA compliance  
needs of GSA's realty professionals.***

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***Update***

***TI 0041 - Spring 1997***

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